

This rule was adopted on December 30, 2004, and becomes effective January 30, 2005. It may be used to determine tax liability on and after the effective date, until the codified version is available from the code reviser's office.

AMENDATORY SECTION (Amending WSR 91-23-037, filed 11/13/91, effective 12/14/91)

**WAC 458-20-110 ((Freight and)) Delivery charges. (1)**  
**Introduction.** ((This rule explains that freight and delivery costs charged to the buyer are generally part of the selling price. Chapter 82.04 RCW in defining "gross proceeds of sales" and "gross income of the business" states that delivery costs may not be deducted from the measure of the B&O tax. Sellers who are making deliveries from an out of state location to customers in Washington should refer to WAC 458-20-193 to determine if they have sufficient nexus to require the payment of the B&O tax or collection of retail sales or use tax on the "gross proceeds of sales."))

((2) Amounts received by a seller from a purchaser for freight and delivery costs incurred by the seller prior to completion of sale constitute recovery of costs of doing business and must be included in the selling price or gross proceeds of sales reported by the seller regardless of whether charges for such costs are billed separately or whether the seller is also the carrier. The sale is complete when the purchaser or the purchaser's agent has received the goods.

((a) "Purchasers agent" means a person authorized to receive goods for the purchaser with the power to inspect and accept or reject them.

((b) "Received" or "receipt" means the purchaser or its agent first either taking physical possession of the goods or having dominion and control over them.

((c) It is presumed that the person who is shown as the consignor (or other designation of the person from whom the goods are sent) on the bill of lading has control over the goods while the goods are in the hands of the carrier. It also will be presumed that the sale is not complete at the time of delivery to the carrier if the seller has personal liability to pay or has paid the carrier.

((3) Freight and delivery costs incurred by a lessor, regardless of whether billed separately to a lessee or not, are costs of doing business to the lessor in every case and must be included in the selling price or gross proceeds of sales reported by the lessor.

((4) Delivery costs incurred after the buyer has taken receipt of the goods are not part of the selling price when the seller is not liable to pay or has not paid the carrier. It

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~~must be clearly shown that the buyer alone is responsible to pay the carrier for the delivery costs to be excluded from the taxable value of the selling price. See WAC 458-20-112 for the deduction of out-of-state freight and delivery charges from "value of products." Also see WAC 458-20-111 for a further discussion of "advances and reimbursements."~~

~~(5) Examples. The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances.~~

~~(a) XYZ Corporation in Seattle orders a repair part for its machine from ABC Distributors located in Spokane. XYZ Corporation requests that the part be shipped by next day air and agrees to pay the additional shipping costs. The seller bills the buyer the exact amount of shipping costs. ABC Distributors is subject to the business and occupation tax and also is required to collect and report the retail sales tax on the amounts billed as shipping charges. The seller was liable to pay the air carrier and the buyer had not taken receipt at the time the part was given to the carrier.~~

~~(b) Jane Doe orders a life vest from Marine Sales in Seattle and she requests that the vest be shipped by United States mail to her home in Bellingham. The seller places the correct postage on the package using a postage meter and charges the buyer the exact amount of postage. The reimbursement of the postage is taxable to the seller. The seller had liability for payment of the postage to the postal service and was required to effect delivery to the buyer.~~

~~(c) L&M Machinery of Spokane ordered a large piece of equipment from ACE Equipment in Renton. L&M specified that the equipment was to be shipped by prepaid freight and free on board (FOB) the seller's dock. L&M requested that the seller use M&T Trucking as the carrier. The transportation charge billed to the buyer is taxable to the seller. The FOB point or other shipping terms are not controlling. The seller was required to deliver the equipment to the buyer. Delivery was not completed until the equipment arrived in Spokane.~~

~~(d) ABC Construction in Seattle ordered replacement parts for a saw from XYZ Parts, Inc., an unregistered business located in Chicago. ABC Construction requested that the parts be shipped freight collect from Chicago and that ABC be shown as the shipper/consignor and also as the consignee on the bill of lading. The seller had no liability to pay the carrier. ABC Construction is subject to use tax on the purchase price of the parts. ABC Construction may exclude the cost of the transportation from the value on which use tax is due.~~

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~~(c) Jones Computer Supply, a distributor located in Seattle, sells computer products primarily by mail order. It is the practice of Jones Computer Supply to make a three-dollar handling charge for each order. No separate charge is made for the transportation. The handling charge is part of the measure of the selling price of the product and fully subject to the wholesaling or retailing and retail sales tax.))~~ This rule explains the manner in which delivery charges are considered for purposes of business and occupation (B&O), retail sales, and use taxes. For information about delivery charges with regard to promotional materials, see WAC 458-20-17803 (Use tax on promotional materials).

**(2) What are delivery charges?** "Delivery charges" means charges by the seller for preparation and delivery to a location designated by the purchaser of tangible personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing. RCW 82.08.010 and chapter 168, Laws of 2003, adopted the national Streamlined Sales and Use Tax Agreement definition of "delivery charges."

**(3) Do the business and occupation (B&O) and retail sales taxes apply to delivery charges?** The measure of the tax is "gross proceeds of sales" for B&O tax (RCW 82.04.070) and "selling price" for retail sales tax (RCW 82.08.010). Gross proceeds of sales and selling price include all consideration paid by the buyer, without any deduction for costs of doing business such as material, labor, and transportation costs, including delivery charges. Thus, delivery charges by the seller are a component of these tax measures.

**(a) What if delivery charges are separately itemized on the sales invoice?** Amounts received by a seller from a buyer for delivery charges are included in the measure of tax regardless of whether charges for such costs are billed separately, itemized, or whether the seller is also the carrier. Limiting delivery charges to the actual cost of delivery to the seller does not affect taxability.

**(b) Does retail sales tax apply to all delivery charges by the seller?** Delivery charges by the seller making a retail sale are a component of the selling price. If the sale of the tangible personal property or service is exempt from retail sales tax, such as certain "food and food ingredients," retail sales tax does not apply to the selling price, including delivery charges, associated with that sale. Similarly, if the product is sold at wholesale, retail sales tax does not apply to the delivery charges of that sale.

**(c) Are there any situations in which delivery charges by the seller may be excluded from the measure of tax?** There is no

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specific exclusion from the measure of tax for delivery charges by the seller. Actual delivery costs, regardless of whether separately charged, may be excluded from the measure of the manufacturing and extracting B&O taxes when the products are delivered outside the state. For further discussion, refer to WAC 458-20-112 (Value of products). WAC 458-20-13501 (Timber harvest operations) provides guidance regarding this issue for persons engaged in activities associated with timber harvesting.

**(d) Delivery charges in cases of payments to third parties.** Delivery charges incurred after the buyer takes delivery of the goods are not part of the selling price when the seller is not liable for payment of the delivery charges. To be excluded from the gross proceeds of sales for B&O tax and selling price for retail sales tax, the seller must document that the buyer alone is responsible to pay the carrier for the delivery charges.

**(e) Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances. In these examples, if the seller had been required to collect use tax (RCW 82.12.040) instead of retail sales tax (RCW 82.08.050), the use tax collection responsibility remains the same as for retail sales tax. This is because, in this context, the "value of article used" has the same meaning as the "purchase price" or "selling price."

**(i) Example 1.** Jane Doe orders a life vest from Marine Sales and requests that the vest be mailed by the United States Postal Service to her home. Marine Sales places the correct postage on the package using its postage meter and separately itemizes a charge on the sales invoice to Jane at the exact amount of the postage cost. Marine Sales is subject to the retailing B&O tax on the gross proceeds of the sale and must collect retail sales tax on the selling price, both of which measures of tax include the charge for postage.

**(ii) Example 2.** XYZ Corporation orders equipment from ABC Distributors and provides ABC with a properly completed resale certificate. ABC ships the equipment using overnight air delivery and itemizes the actual amount of its shipping costs on the sales invoice. ABC must remit wholesaling B&O tax on the gross proceeds of sale, which includes the amount billed as shipping charges. Since the equipment is purchased for resale, ABC does not collect or report retail sales tax.

**(iii) Example 3.** The facts in this example are the same as those in (ii) of this subsection except that XYZ provides ABC with a properly completed exemption certificate. Retail sales tax does not apply to the delivery charge because the selling price, of which the delivery charge is a component, is exempt

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from retail sales tax. However, the delivery charge is included in the gross proceeds of the sale, and thus, is subject to retailing B&O tax.

(iv) **Example 4.** Jones Computer Supply, a distributor, makes retail sales of computer products primarily by mail order. It is the practice of Jones Computer Supply to add a ten-dollar handling charge for each order. No separate charge is made for actual transportation. The handling charge is part of the measure of tax for the retailing B&O and retail sales taxes.

(v) **Example 5.** ABC Construction in Seattle purchased a new saw from XYZ, Inc. The sales contract specifies that ABC will contract with MNO, Inc. for shipping to Seattle and that MNO, Inc. will pick up the saw in Spokane. ABC does contract with MNO for the shipping and is shown as the consignor on the bill of lading. The transportation charge is not included in the measure of tax for purposes of the retailing B&O and retail sales taxes because ABC, the buyer, is liable for payment to MNO, for shipping the new saw.

(4) **Delivery charges and use tax.** Beginning June 1, 2002, "value of article used," which is the measure of the use tax for tangible personal property, includes the amount of any delivery charge paid or given to the seller or on behalf of the seller with respect to the purchase of such article. Beginning July 1, 2004, both the "value of the article used" and the "value of the service used" will be the "purchase price" in instances where the seller is required under RCW 82.12.040 to collect use tax from the purchaser. RCW 82.12.010. "Purchase price" has the same meaning as "selling price" as described in subsection (3) of this rule. Consumers responsible for remitting use tax directly to the department should refer to WAC 458-20-178 (Use tax).

The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances. Presume that all transactions in the following examples occur July 1, 2004, or later.

(a) **Example 1.** ABC Construction ordered replacement parts for a saw from XYZ, Inc., a business located in Chicago that is not required to collect Washington taxes. XYZ contracted with MNO Freight to ship the parts from Chicago. ABC is subject to use tax on the value of the article used (presumed to be the purchase price of the parts) including the cost of the transportation, regardless of whether the transportation costs are itemized.

(b) **Example 2.** The facts in this example are the same as those in (a) of this subsection except that instead of ordering

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a replacement part, ABC Construction sends a broken part to XYZ, Inc. in Chicago for repair. ABC is subject to use tax on the repair service. The cost of transportation is included in the value of the service used, regardless of whether the transportation costs are itemized.

(c) **Example 3.** ABC Construction ordered replacement parts for a saw from XYZ, Inc., a business located in Chicago that is not required to collect Washington taxes. ABC hired MNO Freight to ship the parts from Chicago and was responsible for payment. ABC may exclude the cost of the transportation from the value on which use tax is due. The transportation costs ABC pays MNO are not a component of the value of the article used because the cost is not part of the consideration paid to XYZ for the replacement parts. ABC is subject to use tax on the value of the parts, which is presumed to be their purchase price.